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Ex. of Guion v. Dymond for Complaint.

Clerk.

Filed Oct. 27, 1902.

Supreme Court of the United States.

— TERM, 1902.

11
No. ~~12~~ Orig.

STATE OF LOUISIANA

versus

STATE OF MISSISSIPPI.

MOTION AND BRIEF IN SUPPORT OF MOTION TO FILE BILL OF COMPLAINT.

WALTER GUION,
Attorney General of Louisiana.

JOHN DYMOND, JR.,
ALBERT ESTOPINAL, JR.,
Of Counsel.



Supreme Court of the United States.

No. _____

STATE OF LOUISIANA

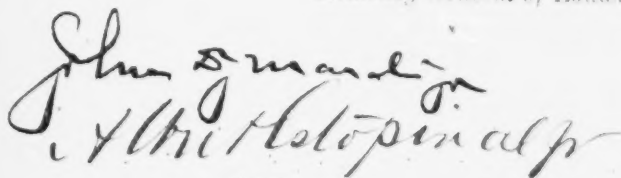
versus

STATE OF MISSISSIPPI.

And now comes the State of Louisiana, through Walter Guion, its Attorney General, and Messrs. John Dymond, Jr., and Albert Estopinal, Jr., of Counsel, and moves this Honorable Court for permission to file in this Court its bill of complaint against the State of Mississippi, and for process to answer.



Attorney General of Louisiana.



Of Counsel.

Supreme Court of the United States.

No. _____

STATE OF LOUISIANA

versus

STATE OF MISSISSIPPI.

BRIEF ON THE PART OF THE STATE OF LOUISIANA IN SUPPORT
OF ITS MOTION TO FILE ITS BILL OF COMPLAINT.

May it please Your Honors:

This proceeding is an action of boundary on the part of the State of Louisiana brought against its adjoining sister State, Mississippi, and relief is sought through the original jurisdiction of this Honorable Court, as provided in Section 2 of Article Three of the Constitution of the United States of America.

We have set forth in our Bill of Complaint the detail of the dispute between the two States. It is as to their respective boundaries as created, described and established by the Acts of Congress of the United States forming the two

States, and your Honors are asked to interpret the meaning of these Acts of Congress and to apply your resulting conclusions in establishing a boundary line in the waters between certain parts of the two States where the disagreement as to their respective rights exists.

The proceeding is not a novel one, as in the course of the history of our Union many similar cases have been heard and decided by your Honors.

In the case of the *State of New Jersey vs. The State of New York*, 5 Peters, 284, the question was first fully considered and it was there held, that the Supreme Court of the United States had original jurisdiction to settle boundaries between States. This decision on this point was affirmed in the cases of the *State of Rhode Island vs. The State of Massachusetts*, 12 Peters, 657; and has been uniformly followed in the cases of the *State of Missouri vs. The State of Iowa*, 7 Howard, 660; *The State of Florida vs. The State of Georgia*, 17 Howard, 478; *The Commonwealth of Virginia vs. The State of West Virginia*, 11 Wallace, p. 39; *The State of Missouri vs. The State of Kentucky*, 11 Wallace, p. 395; *The State of Indiana vs. The State of Kentucky*, 136 U. S. p. 479; *The State of Virginia vs. The State of Tennessee*, 148 U. S. p. 503.

Your Orator therefore respectfully prays that its motion for leave to file its Bill of Complaint be granted, and that process to answer be issued and all other necessary orders be granted.

WALTER GUION,

Attorney General of Louisiana.

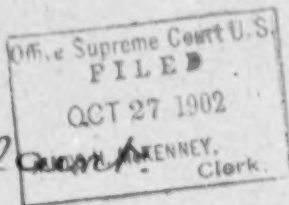
JOHN DYMOND, JR.,

ALBERT ESTOPINAL, JR.,

Of Counsel.

N^o. 12 Orig^e

Bill of Complaint



Filed Oct. 27, 1902.

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STATE OF LOUISIANA

versus

STATE OF MISSISSIPPI.

—
BILL OF COMPLAINT.

—
WALTER GUION,

Attorney General of Louisiana.

JOHN DYMOND, JR.

ALBERT ESTOPINAL, JR.,

Of Counsel.

Supreme Court of the United States.

— TERM, 1902.

NO. —

STATE OF LOUISIANA

versus

STATE OF MISSISSIPPI.

BILL OF COMPLAINT.

*To the Honorable, the Chief Justice and the Associate Justices
of the Supreme Court of the United States:*

The STATE OF LOUISIANA, one of the United States of America, by WILLIAM W. HEARD, Governor, and upon the information of WALTER GUION, Attorney General, brings this, her Bill of Complaint, against the STATE OF MISSISSIPPI, one of the United States of America, and against ANDREW H. LONGINO, a citizen of the State of Mississippi, in his capacity as Governor of the State of Mississippi, and Monroe McClurg, Attorney General of the State of Mississippi, and thereupon your orator complains and says:—

1st. That the State of Louisiana was admitted into the Union of the United States of America by the Act of Congress, found in Chapter 50 of the United States Statutes at

Large, Volume 2, page 701, approved April 6th, 1812, and therein the boundaries of the said State of Louisiana, in the preamble of said act, were described as follows:—

"WHEREAS, the representatives of the people of all that part of the territory or country ceded under the name of Louisiana, by the Treaty made at Paris on the 30th day of April, 1803, between the United States and France contained within the following limits, that is to say: Beginning at the mouth of the River Sabine, thence by a line drawn along the middle of said River, including all islands to the 32d degree of latitude; thence due north to the northernmost part of the 33d degree of north latitude; thence along the said parallel of latitude to the Mississippi River; thence down the said River to the River Iberville, and from thence *along the middle of said River and Lakes Maurepas and Pontchartrain to the Gulf of Mexico; thence bounded by said Gulf to the place of beginning, including all islands within three leagues of the Coast*" etc. (Italics ours.)

2d. That according to the foregoing description, the eastern boundary of the State of Louisiana was formed by the Mississippi River, beginning at the northeast corner of said State and extending south to the junction of the said River, with the River Iberville (now known as Bayou Manchac) and thence extending eastwardly through the lower end of the Amite River, through the middle of Lake Maurepas, Pass Manchac, and Lake Pontchartrain, and in order to reach the Gulf of Mexico its only course was through the Rigolets, into Lake Borgne, and thence by the deep water channel through the upper corner of Lake Borgne, following said channel, north of Half Moon Island, through Mississippi Sound to the north of Isle à Pitre, through the Cat Island Channel, southwest of Cat Island, into the Gulf of Mexico, which said eastern boundary of the State of Louisiana is more fully shown on diagram No. 1, made part of this bill;

3rd. That by the Act of Congress, found in the United States Statutes at Large, Vol. 2, p. 708, chapter 57, approved April 14th, 1812, additional territory was added to the then

existing State of Louisiana, which additional territory was described in the following language:—

"Beginning at the junction of the River Iberville with the Mississippi River; thence along the middle of the Iberville and of the River Amite and Lakes Maurepas and Pontchartrain to the eastern mouth of Pearl River; thence up the eastern branch of the Pearl River to the 31st degree of north latitude; thence along the said degree of latitude to the River Mississippi; thence down the said River to the place of beginning, shall become and form a part of the State of Louisiana";

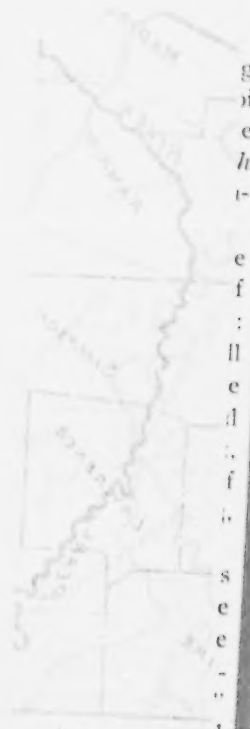
4th. That the effect of this legislation, as to the eastern boundary of the State of Louisiana, was to retain the Mississippi River as the original eastern boundary, as far south as the 31st degree of north latitude. The change then moved the eastern boundary eastward along the 31st degree of north latitude to the Pearl River, whence it then ran south down the said River, through its eastern branch, till it entered the northern corner of Lake Borgne, where the State's eastern boundary then joined and followed the boundary line originally fixed in the Act of April 6th, 1812, and followed, as heretofore stated, the deep water channel through the upper corner of Lake Borgne, north of Half Moon Island, eastward through the deep water channel along the Mississippi Sound till it reached the Cat Island channel north of Isle à Pitre, and southwest of Cat Island, whence passing through Chandeleur Sound, northeast of Chandeleur Islands, it entered the Gulf of Mexico, and ran south around the Delta of the Mississippi River and then north and westward to the point where the Sabine River enters the Gulf of Mexico, as will be more fully seen from the diagram No. 2, made part of this bill;

5th. That the territory lying adjacent to, and to the eastward of the State of Louisiana is the State of Mississippi, which latter State was admitted into the Union of the United States of America by the

Act of Congress, found in the United States Statutes at Large, Volume 3, Chapter 23, page 348, approved March 1st, 1817, whereby the inhabitants of the western part of the then Mississippi Territory were authorized to form for themselves a State Constitution and to be admitted into the Union, the boundaries of the then to be created State being described as follows:—

“Beginning at the River Mississippi at a point where the southern boundary line with the State of Tennessee strikes the same; thence along the said boundary line to the Tennessee River; thence up the same to the mouth of Bear Creek; thence by a direct line to the northwest corner of the county of Washington (Alabama); thence due south to the Gulf of Mexico; *thence westwardly, including all islands within six leagues of the shore to the most southern junction of Pearl River with Lake Borgne*; thence up said River to the 31st degree of north latitude; thence west along said degree of latitude to the Mississippi River; thence up the same to the beginning”;

6th. That by the said Act, Congress intended that the southern boundary line of the State of Mississippi, beginning at the point dividing it from the State of Alabama, should run westwardly till it joined the Louisiana eastern boundary line, and that in doing so, the said southern boundary would in effect start westward from a point eighteen miles south of the Coast line, and include in its westwardly direction the western end of Petit Bois Island, all of Horn Island, Ship Island and Cat Island, and the smaller islands north of these, those islands being the ones contemplated in the Act of Congress, as being within eighteen miles of the Southern Coast line of Mississippi, and that the said southern boundary of Mississippi, extending in its *westwardly* direction through the Gulf of Mexico, would gradually approach the coast line, and meet the eastern boundary line of Louisiana, just as the said eastern boundary line of Louisiana immerses from the Cat Island Channel into the Gulf of Mexico, and thence follow and



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become the same as the Louisiana boundary line extending westwardly to the south of Cat Island, through Mississippi Sound to the north of Half Moon or Grand Island to the *most southern junction of the east branch of Pearl River with Lake Borgne*, being identical with the Louisiana eastern boundary, and thence extending up the channel of Pearl River;

7th. That the islands included between the shore line and the southern boundary of the State of Mississippi are the islands heretofore described, viz: the western end of Petit Bois Island, with all of Horn Island, Ship Island and Cat Island, and the small islands north of them, those islands being large, and well known to Congress at the time of the passage of the act, all of which islands and the southern boundary of the State of Mississippi will more fully appear from the diagram No. 3, made a part of this bill;

8th. That the islands contemplated in the Act of Congress of 1812, creating the State of Louisiana, and intended to be embraced within the State of Louisiana, as provided by the clause, "*Thence bounded by the said Gulf to the place of beginning, including all islands within three leagues of the Coast,*" were all of the other islands, except those heretofore named as going to the State of Mississippi, as all other islands, and all other mainland, are south and west of the boundary line thus passing from Pearl River through the Deep Water Channels in Lake Borgne, and Mississippi Sound, through the Deep Water Channel, southwest of Cat Island to the eastward of the Chandeleur Islands, and thence south, taking in the Delta of the Mississippi River, and extending westward along the Gulf coast, including all islands along the coast, to the Sabine River, where the State of Louisiana is thence bounded on the westward by the State of Texas, all of which will more fully appear from diagram No. 2, heretofore referred to;

9th. Now your orator avers that there has developed in recent years in the waters south of the State of Mississippi and

east of the southern portion of the State of Louisiana a considerable growth of oysters, and an industry of large proportions, in the handling of the said bivalves, either in their fresh or in a canned condition, has resulted therefrom;

10th. That the State of Mississippi has, by legislative enactments, regulated the oyster industry in the waters of said State, and *permits* the dredging of oysters on the natural oyster reefs in waters of the said State, as will more fully appear from the statutes of said State to which reference is made;

11th. That the State of Louisiana has by legislative enactments regulated the oyster industry in the said State of Louisiana, and *prohibits* the dredging of oysters on the natural reefs in the waters of said State, as will more fully appear from the statutes of said State to which reference is made;

12th. That the provisions of the laws of the said two States differ considerably in many other respects.

13th. That the existence and location of the natural oyster reefs in the waters of the Parish of St. Bernard in the State of Louisiana which adjoins the State of Mississippi is shown by the map made from a reconnaissance by the United States Fish Commission steamer, "Fish Hawk", in February, 1898, as will more fully appear from diagram No. 4, now made part of this bill;

14th. Now your orator avers that the boundary line dividing the two States in the waters thereof has been clearly defined by the Acts of Congress creating the States of Louisiana and Mississippi, as will be seen from the diagram No. 5, made up from the boundary descriptions taken from the Acts of Congress creating the said States of Louisiana and Mississippi, which diagram is also made part of this bill;

15th. That the said boundary line in the waters between said States has never been designated by buoys or marks of any kind by either State, nor designated in any manner, except by the United States Government in so far as it has buoyed the *Deep Water Channel*, extending from the mouth of the Pearl

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River through the upper corner of Lake Borgne north of Half Moon Island, eastward to the Cat Island Pass, north of Isle à Pitre, and southwest of Cat Island, which buoys were placed by the Coast Survey of the United States Government ;

16th. That owing to the differences in the laws of the States of Louisiana and Mississippi, regulating the oyster industry of the respective States, the said statutes providing penalties for the violation thereof, much confusion has resulted and a great public demand has arisen in Louisiana to definitely mark the boundary line dividing the two States in the waters thereof; that citizens of the State of Mississippi, in violation of the laws of the State of Louisiana, have been fishing oysters with dredges on the natural reefs in the waters of the State of Louisiana, said fishermen claiming that they were in the waters of the State of Mississippi and consequently not violating the laws of the State of Louisiana;

17th. That affairs had reached such a crisis that, to avoid an armed conflict between the sheriff and officers of the Parish of St. Bernard in the State of Louisiana and the sheriff and officers of the County of Harrison in the State of Mississippi, a meeting of citizens of the State of Louisiana was called by the Governor of the State of Louisiana and held in the City of New Orleans, State of Louisiana, as will be seen from a certified copy of the minutes of said meeting, to-wit :—

"Minutes of a meeting held Saturday, Jan. 19th, 1901, at the office of John Dymond, Jr., No. 339 Carondelet street, New Orleans, La., of the following gentlemen :—

Present :—His Excellency, Gov. W. W. Heard; Lieutenant Governor Albert Estopinal; Major H. B. Richardson, Chief of the Board of State Engineers; Messrs. Simon Leopold and A. T. Bonvillain, representing the Commission appointed by the House of Representatives of the State of Louisiana; Mr. H. C. Cage, representing the Commission appointed by the Senate of the State of Louisiana, and Messrs. J. B. Easterling and R. Perez, representing the Committee from the Police Jury of the Parish of Plaquemines; Albert Estopinal, Jr., District Attorney for the

Twenty-ninth Judicial District; Clem Story and Gus Schoenberger, Oyster Inspectors, respectively of the Parishes of St. Bernard and Plaquemines; Frank C. Mevers, Sheriff of the Parish of Plaquemines; E. E. Nunez, Sheriff of the Parish of St. Bernard; Messrs. Paul Renaud, S. M. Fuchich, M. P. Doullut, James Wilkinson and many others.

On request of Mr. Clement Story, Gov. Heard was asked to preside and Mr. John Dymond, Jr., was asked to act as secretary of the meeting. Mr. Clement Story then addressed the meeting upon the subject of the call, stating that the oyster industry was of much greater magnitude than our people believed; that it was in need of consideration and protection at the hands of the State officials inasmuch as the existing law failed to provide the means by which to secure the protection of the oyster beds from depredation by citizens of Mississippi, incidentally showing that there was a dispute between the States of Louisiana and Mississippi as to the boundary line dividing the waters of the two States, and that Mississippians were not only fishing oysters with tongs in the State of Louisiana, contrary to the statute, but were fishing them on Louisiana natural reefs with steam dredges, which under the Louisiana law is made a Penitentiary offense. Mr. Story called to the attention of the meeting the Congressional legislation defining the boundaries of the State of Louisiana and suggested that some action should be taken to secure the co-operation of the State of Mississippi in fixing the boundary line.

Mr. John Dymond, Jr., followed Mr. Story, quoting the law on the subject, and stating to the Committee that the Mississippi Oyster Factories desired to be permitted to go ahead, regardless of the law, pending the fixing of the boundaries, but at the same time calling to the attention of the Committee the fact that these tongmen and the dredges from the Oyster Factories in Mississippi were fishing in waters that were admittedly within the State of Louisiana. He called to the attention of the meeting the fact that Congress could possibly be induced to appropriate a sum sufficient to buoy the boundary line if the States of Louisiana and Mississippi were unable to agree amongst themselves, but suggested that a conference should be had. He also called attention to the necessity of enforcing the law during the interval of establishing a boundary, in order that the oyster industry might be protected.

Mr. James Wilkinson then addressed the meeting, showing the immense development of the oyster industry in our sister Atlantic Coast States and demonstrating that the Louisiana Oyster Industry was susceptible of much greater development than enjoyed in any of those States; that an acre of oysters would yield 300 barrels, which at \$1.00 a barrel would give gross proceeds of \$300.00 from one acre of oysters; that there were at least a million acres, if not more, of oyster beds or lands covered with water which could be made into oyster beds along the coast of the State of Louisiana; that the Northern States appropriated large amounts of money in order to protect their oyster industry while the State of Louisiana so far spent practically no money whatsoever for the purpose.

Mr. Ducate, of the firm of Lopez & Ducate, owners of an oyster factory at Biloxi, Miss., and also of a factory at Neptune, La., then addressed the meeting at some considerable length, denying that his dredges fished oysters in the State of Louisiana, he claiming that the eighteen-mile limit of the State of Mississippi took in some of the marsh islands, or what he called marsh islands, in the *Louisiana Marshes*. These marsh lands are merely intersected by small bayous and in no sense islands, yet it shows the disposition of the Mississippi people to invade the State of Louisiana, at least to the extent of this disputed territory.

Mr. S. M. Fucich, an Oyster Receiver of this city, addressed the meeting on the general welfare of the oyster industry, showing the necessity of its protection, calling to the attention of those present that the Parish of St. Bernard was the frontier which had to be defended and urging that steps should be taken in this direction.

Messrs. Paul Renaud, Captain M. P. Doullut, F. C. Meyers and many others addressed the meeting.

Lieutenant Gov. Albert Estopinal then proposed the following Resolution, which on motion was duly adopted, to-wit:—

Be it *Resolved*, That the Governor of the State of Louisiana request the Governor of the State of Mississippi to appoint a Commission of five gentlemen to confer with a Commission to be appointed by the Governor of the State of Louisiana to consider the determination of the water boundary line between the two States and arrange for its easy location and identification by a proper system of buoys.

The above motion being carried, Gov. W. W. Heard announced the appointment of the following gentlemen on the Committee, to constitute the Commission, to-wit:—

Messrs. Albert Estopinal, Jr., John Dymond, Jr., Clement Story, Sydney F. Lewis and H. C. Cage. Thereupon the meeting adjourned.

(Signed) W. W. HEARD, Chairman.
(Signed) JOHN DYMOND, JR., Secretary."

The original minutes of said meeting being made part of this bill as Exhibit "A".

18th. That to determine amicably the eastern boundary line between the said States, in the waters to the south of the State of Mississippi, and to the east of the southern portion of Louisiana, W. W. Heard, Governor of the State of Louisiana, addressed the following communication to his Excellency, A. H. Longino, Governor of the State of Mississippi, to-wit:—

"STATE OF LOUISIANA, EXECUTIVE DEPARTMENT,

BATON ROUGE, January 26, 1901.

His Excellency, Governor A. H. Longino,

Jackson, Miss.:

Dear Sir:—

On January 19th an important meeting was held at New Orleans for the purpose of considering the actual condition of the Oyster Industry, and to devise plans for defining the water boundaries between the States of Mississippi and Louisiana, with the view of extending to the oyster beds the protection contemplated by the Laws of these two States.

To enable you to fully ascertain the objects of this meeting and its proceedings, I herewith enclose an official copy thereof together with newspaper clippings which kindly return after perusal. You will observe that a resolution was adopted requesting the Governors of Mississippi and Louisiana each to appoint a commission of five to consider the determination of the water boundary line and to arrange for its easy identification by a proper system of buoys.

Pursuant to this resolution I have appointed the following gentlemen: Messrs. Albert Estopinal, Jr., John Dymond, Jr., Clement Story, Sidney F. Lewis and H. C. Cage.

I would therefore request that you appoint the Commissioners for your State at your earliest convenience.

(Signed) W. W. HEARD,
Governor."

As will be seen from a copy of said letter taken from the letter book in the hands of the Governor's private secretary, sworn to by said secretary and made part of this bill, marked Exhibit "B".

19th. That his Excellency, A. H. Longino, Governor of the State of Mississippi, in response to the foregoing, then addressed to his Excellency, W. W. Heard, Governor of the State of Louisiana, the following communication, to-wit:—

"EXECUTIVE DEPARTMENT,
JACKSON, MISSISSIPPI.

February 9, 1901.

*His Excellency, Gov. W. W. Heard,
Baton Rouge, La.*

Dear Governor:—

I have the honor to inform you that I have this day appointed the following named gentlemen as Commissioners from this State to confer with the Commissioners appointed by you to determine the water boundary line between the two States, to-wit:—

Hon. E. J. Bowers, Bay St. Louis, Miss.

Mr. A. Keller, Bay St. Louis, Miss.

Hon. W. A. White, Biloxi, Miss.

Mr. Harry T. Howard, Biloxi, Miss.

Hon. J. I. Ford, Scranton, Miss.

I have the honor to be, sir,

Very truly yours,

(Signed) A. H. LONGINO,
Governor."

The original of which said letter is made a part of this bill marked Exhibit "C".

20th. Your orator avers that this joint commission on boundary met in the City of New Orleans, State of Louisiana, on the 26th of March, 1901, as will appear from a certified copy of the minutes of said meeting as follows, to-wit:—

"Minutes of the meeting of the joint commissions appointed by Gov. W. W. Heard on the part of the State of Louisiana, and Gov. A. H. Longino on the part of the State of Mississippi, to confer as to the boundary line between the two States in the waters thereof, held at the office of Mr. John Dymond, Jr., Tuesday, March 26th, 1901, at 10 A. M.

Present:—Mississippi Commission:—Harry T. Howard, chairman; Hon. W. A. White, Hon. E. J. Bowers, Hon. J. I. Ford. Absent:—Hon. A. Kellar.

Louisiana Commissioners:—Hon. Albert Estopinal, Jr., chairman; Mr. John Dymond, Jr., secretary; Hon. Clem Story, Col. Sidney F. Lewis and Senator H. C. Cage.

The meeting was called to order by Hon. Albert Estopinal, Jr., chairman of the Louisiana Commission, and upon roll call by Mr. John Dymond, Jr., the above personnel was announced to be present.

Mr. Albert Estopinal, Jr., stated the purposes of the meeting and suggested that Mr. Harry Howard, chairman of the Mississippi Commission, should be elected chairman of the joint meeting of the two commissions.

On motion of Mr. John Dymond, Jr., seconded by Hon. Clement Story, Mr. Harry T. Howard was elected chairman of the joint session.

On motion of Hon. H. C. Cage, seconded by Hon. E. J. Bowers, Mr. John Dymond, Jr., was elected secretary of the joint session.

Commissioner W. A. White stated to the assembly that the Mississippi Commission had not yet had an opportunity to confer as to the subject matter before them, and thereupon he moved, and the same was duly seconded by Mr. Clement Story, that a recess of the joint commission be taken until 11:30 A. M. This motion was put and adopted, and the meeting then took a recess until 11:30 A. M.

At 11:30 A. M., after recess, the meeting was again called to order by Chairman Harry T. Howard.

Present:—Messrs. Howard, White, Bowers, Ford, Estopinal, Story, Lewis, Cage and Dymond.

Mr. John Dymond, Jr., at the request of the Louisiana Commission, then presented to the Mississippi Commission the views of the Louisiana Commissioners on the subject of the boundary line in the waters between the two States. Mr.

Dymond stated that there was no justification for the popular opinion of confusion as to the boundary between the two States; that there was in truth and fact no confusion; that the eastern boundary of the State of Louisiana in the waters between that State and the State of Mississippi originally ran through the Rigolets and extended to the Gulf following the deep water channel; that by the Act of 1812 annexing the territory west of the Pearl River the eastern boundary of Louisiana was extended to the mouth of the Pearl River, from which point the line joined the original water boundary and extended to the Gulf by the deep water channel, passing to the eastward of Chandeleur Islands. This boundary entirely agreed with the boundary subsequently given to the State of Mississippi when it was admitted as a State to the Union, inasmuch as its boundary began at a point ten miles east of Pascagoula River, thence ran westwardly, including islands within eighteen miles of the coast, and that in following this westwardly direction the boundary took the deep water channel which made it coincide with the boundary of the State of Louisiana.

This view of the matter having been presented a general discussion followed during which the members of the Mississippi Boundary Commission admitted that the view was a novel one to them, they being unable to pass upon it at the moment and requesting further time.

On motion of Hon. E. J. Bowers, seconded by Hon. H. C. Cage, the Louisiana Boundary Commission were requested to express their ideas as to the boundary line on the map which had been the subject of discussion, the line to be delineated in red ink, which should be presented to the Mississippi Commission subsequently, and that they in turn should endorse their views thereon.

The motion was put and carried.

The Louisiana Commission thereupon invited the Mississippi Commission to luncheon at the Cosmopolitan Hotel, whereupon on motion of Hon. Clement Story, duly seconded, the meeting adjourned subject to the call of the chairman.

(Signed) JOHN DYMOND, JR., Secretary.

(Signed) H. T. HOWARD, Chairman."

Which said original minutes are now made a part of this bill marked Exhibit "D", and the said original map, the sub-

ject of discussion, is now made a part of this bill marked Exhibit "E".

21st. That the said Commission appointed on the part of the State of Mississippi met, after some five months' delay, and on July 20th, 1901, submitted its reply to the Louisiana Commission, as follows, to-wit:—

"Hon. Albert Estopinal, Jr.,

Chairman Louisiana Boundary Commission.

The Commission appointed by the State of Mississippi to confer with a like Commission appointed by the State of Louisiana, having met and considered maturely the claims advanced by the Louisiana Commission, and having examined the line as delineated by that body and submitted with said claims, are unable to concede the line as claimed by the State of Louisiana, and as marked and set forth upon the map filed with said claim.

The difference between the line marked by your honorable body and that which we conceive is the true boundary is so great that we have no hope of being able to reconcile them, and therefore deem it useless to submit any counter line or proposition.

The Mississippi Commission considers as islands considerable territory which the Louisiana Commission claim as mainland, and the difference over this question of fact appears to us to be past reconciling.

We beg to disclaim any idea of being discourteous in failing to submit a counter line for your consideration.

It is apparent that the only hope of settlement is a friendly suit in the Supreme Court of the United States and we respectfully suggest that course.

Bay St. Louis, Miss., July 20, 1901.

(Signed) H. T. HOWARD, Chairman;
J. I. FORD, Secretary;
E. J. BOWERS,
W. A. WHITE,
AUG. KELLER."

Which said original document is now made a part of this bill marked Exhibit "F".

22nd. Your orator now avers that, as will appear from the foregoing, the State of Louisiana has exhausted all means whereby the said boundary line might be established amicably, except for the suggestion made by the State of Mississippi through its Commission in its foregoing reply and contained in the following language:—

"It is apparent that the only hope of a settlement is a friendly suit in the Supreme Court of the United States, and we respectfully suggest that course."

23rd. Now your orator avers that it is entitled to appeal for relief to your honors, as one of the causes influencing the establishment by the Constitution of the United States of America, of your august tribunal, was the determining of disputed boundaries between Sovereign States of the Union and that the right and power is therefore within your jurisdiction to fix and determine the boundary line dividing the States of Louisiana, south of the State of Mississippi, in the waters lying between the said States;

24th. That the eastern water boundary line as claimed by your orator, viz: a line beginning at the most southern junction of the Channel of the east branch of the Pearl River with Lake Borgne and thence eastward following the Deep Water Channel to the north of Half Moon Island, through the Mississippi Sound Channel, to Cat Island Pass, northeast of Isle à Pitre into the Gulf of Mexico, thereby dividing the waters between the two States, agrees, and is in accord, with the acts of Congress creating respectively the State of Louisiana and the State of Mississippi as already shown by diagram No. 5; that any other boundary than the *Deep Water Channel* as aforesaid would cause the limits of the two States to conflict and overlap, and that it is not to be presumed that the Congress of the United States intended to, or would establish, in its description, a boundary for the State of Mississippi, conflicting with the already existing Louisiana eastern boundary, when there is a construction of the wording of the two Acts,

in fact the only construction that suggests itself, that shows a boundary readily ascertained, harmonizing with the words of the Acts as they now read, and clearly defining the limits of the two States in the waters between them.

25th. Your orator further avers that the use of the word "*Westwardly*" in the description of the southern boundary of the State of Mississippi, as that southern boundary line extends westwardly from the Alabama State line to the Louisiana eastern boundary line, shows that it was not the intention of Congress to have it run direct or due west throughout the whole course, and that it was evidently the intention of Congress, in giving to the State of Mississippi the Islands north of that westwardly drawn line, that the eighteen-mile limit shall gradually decrease as it approached the Louisiana line on the east till it met and followed it to its source. If the Mississippi line ran parallel to the southern coast of Mississippi, at a distance of eighteen miles from such coast line following the meander of the coast, and thence joined at right angles a line emerging from the mouth of Pearl River, such line would not only include Grassy, Half Moon, Round, LePetit Pass Islands and Isle à Petre, already belonging to Louisiana as being within nine miles or three leagues of the Louisiana shore line, but such line would also include part of the mainland of the State of Louisiana as will be seen from the following diagram (No. 6) made a part of this bill, and it certainly could not have been the intention of Congress to take away from the State of Louisiana any islands or mainland already belonging to it and to give them to the State of Mississippi, as such a proceeding, without the consent of the Legislature of the State of Louisiana, would be in violation of Sec. 3 of Art. IV of the Constitution of the United States.

26th. Your orator avers that the marsh lands claimed by the State of Mississippi to be islands are in truth, with the exception of the Isle à Pitre, Grassy, Half Moon, Round and Le Petit Pass Islands, low lying marsh lands forming part of the mainland of the State of Louisiana; that said swamp

or marsh lands and islands have been known as and called since time immemorial "The Louisiana Marshes"; that they were approved to the State of Louisiana by the Commissioner of the General Land Office on May 6, 1852, as will appear from a certified copy of said record of approval from the United States Land Office made a part of this bill, marked Exhibit "G", and where not since sold by the State of Louisiana to private purchasers have always stood on the books of the Register of the Louisiana State Land Office as State lands, to be offered for sale, until recently transferred by the State of Louisiana to the Board of Commissioners for the Lake Borgne Basin Levee District by the provisions of Act No. 14 of the Legislature of the State of Louisiana for the year 1892, for the purpose of enabling the said Levee Board, by the proceeds of sale of said lands to secure the funds to aid in the building of levees in that Levee District, to protect the lands from overflow.

27th. That parts of said disputed territory claimed by the State of Mississippi to be islands within eighteen miles of its shore line are in fact part of the mainland of the State of Louisiana, and therefore belong to and form part of said State of Louisiana, but if your Honors should feel that any part of this disputed area was islands by reason of the presence of shallow water, then as islands they are within the nine mile limit of distance from the shore line of the State of Louisiana and therefore belong to and form part of the State of Louisiana by that second provision of the Act of Congress giving Louisiana all islands within three leagues of its shore line.

28th. Your orator further avers that where contiguous States or countries are separated by water it is, and always has been, the custom to regard the *Channel* as establishing the boundary line of such States, and that the State of Mississippi has itself recognized this principle in the description of its territorial limits as found in the second article of its own Constitution adopted November, 1890, in the following words:—

"The limits and boundaries of the State of Mississippi are as follows, to-wit:— Beginning on the Mississippi River (*meaning thereby the center of said River or thread of the stream*) where the southern boundary line of the State of Tennessee strikes the same, as run by B. A. Ludlow, D. W. Connelly and V. Petrie, commissioners appointed for that purpose on the part of the State of Mississippi A. D. 1837 and J. D. Grahon and Austin Miller, commissioners appointed for that purpose on the part of the State of Tennessee; thence east along the said boundary line of the State of Tennessee to a point on the west bank of the Tennessee River, six four-pole chains south of and above the mouth of Yellow Creek; thence up the said River to the mouth of Bear Creek; thence by a direct line to what was formerly the northwest corner of the County of Washington, Ala.; thence on a direct line to a point ten miles east of the Pascagoula River on the Gulf of Mexico; thence westwardly including all the Islands within six leagues of the shore *to the most eastern junction of Pearl River with Lake Borgne*; thence up said Pearl River to the 31st degree of north latitude; thence west along said degree of latitude *to the middle or thread of the stream of the Mississippi River*; thence up the middle of the Mississippi River or thread of the stream to the place of beginning, including all islands lying east of the thread of the stream of said River, and also including all lands which were at any time heretofore a part of this State."

29th. Your orator avers that as heretofore stated the Congress of the United States, as well as the various departments of the United States Government having authority in the premises, have themselves recognized the boundary line contended for by the State of Louisiana, by reason of the fact that the United States Government has confirmed to the State of Louisiana the lands composing Half Moon Island which is just south of the deep water channel, and which island is composed of Section 36 of Township 10 S. R. 17 East, Sections 29, 31, 32 and 33 of Township 10 S. R. 18 East; Section 1 of Township 11, S. R. 17 East; Sections 5 and 6 of Township 11, S. R. 18 East, in the South-Eastern

Land District of Louisiana, East of the Mississippi River; and that the lands forming what is commonly known as Isle à Pitre and being in sections 23, 24, 25, 26, 27, 28, 32, 33 and 34 of Township 10, S. R. 20 East, and in fact all of the remaining lands in Township 11, S. R. 17 East; Township 11, S. R. 18 East; Township 11, S. R. 19 East; Township 11, S. R. 20 East; Township 12, S. R. 16 East; Township 12, S. R. 17 East; Township 12, S. R. 18 East; Township 12, S. R. 19 East; Township 12, S. R. 20 East; Township 13, S. R. 16 East; Township 13, S. R. 17 East; Township 13, S. R. 18 East; Township 13, S. R. 19 East; Township 13, S. R. 20 East; in the aforesaid Land District, and parts of which are claimed by the State of Mississippi under its right angle line to belong to the State of Mississippi, have in fact been also confirmed to the State of Louisiana by the United States Government, and are recognized as belonging to and forming part of the State of Louisiana by the said United States Government and have always heretofore been so recognized by the people of the said two States; that the lands forming the Isle à Pitre were sold by the State of Louisiana to Richard Pindell on March 20, 1867, as per land patents of the State of Louisiana Nos. 194, 195 and 196, that Pindell sold to H. J. Leovy on April 18, 1867, by acts of sale before Geo. W. Christy, a notary public of the State of Louisiana, certified copies of said State land patents and said notarial acts being made part of this bill, marked Exhibits "H", "I", "J", "K" and "Z", and are now owned by the Messrs. Gilmore of the State of Louisiana, who acquired the said, and other, lands from Leovy on March 2, 1892, by two acts of purchase before Theo. Cotonio, a notary public of the State of Louisiana, certified copies of said notarial acts being made a part of this bill, marked Exhibits "L" and "M", and said lands have been assessed on the assessment rolls of the Parish of St. Bernard, State of Louisiana, and taxes thereon have been paid to the State of Louisiana for the past 35 years, and said lands have never been

assessed on the rolls of, nor have any taxes ever been paid to, the State of Mississippi and that this is the case with all the other lands and islands now claimed by the State of Mississippi, but which in truth and fact belong to the State of Louisiana.

30th. Your orator therefore further avers that all constituted authorities competent to create, adopt or consider the said boundary line have declared the water boundary line claimed by the State of Louisiana, viz: The deep water channel running from the most southern junction of the Eastern mouth of Pearl River, through Lake Borgne, north of Half Moon Island, through Mississippi Sound, north of Isle à Pitre and southwest of Cat Island, through Cat Island Pass, through Chandeleur Sound northeast of Chandeleur Islands, to the Gulf of Mexico, to be the true water boundary between the said States.

To the end therefore that the said defendants may, if they can, show why your orator should not have the relief prayed for and may, according to the best and utmost of their several respective knowledge, remembrance, information and belief, full true, direct and perfect answer make to the matters and things averred in this Bill, an answer under oath being herewith specially waived, may it please your Honors to grant to your orator the most gracious writ of subpoena directed to the said State of Mississippi, and to said Andrew H. Longino, Governor of the State of Mississippi, and Monroe McClurg, Attorney General of the State of Mississippi, commanding them and each of them to be and appear in this Honorable Court on a day to be therein named, and to abide the judgment of this Court.

And after due proceedings may it please your Honors to adjudge and decree that the boundary line dividing the States of Louisiana and Mississippi, in the waters between the said States to the south of the State of Mississippi, and to the southeast of the State of Louisiana is the deep water channel, commencing at the most southern junction of the eastern mouth

of Pearl River with Lake Borgne, thence by the deep water channel through Lake Borgne, north of Half Moon Island through Mississippi Sound, north of Isle à Pitre, through Cat Island Pass Channel, southwest of Cat Island, through Chandeleur Island Sound, northeast of the Chandeleur Islands, to the Gulf of Mexico, as is delineated on the original map submitted by the Louisiana Boundary Commission to the Mississippi Boundary Commission and now made part of this bill marked Exhibit "E", that the said deep water channel be located throughout its course and permanently buoyed at the joint expense of the two States, that the State of Mississippi and its citizens be perpetually enjoined from disputing the sovereignty and ownership of the State of Louisiana in the said land and water territory south and west of said boundary line, and your orator prays that she may be allowed her costs in this cause expended, and that she may have all such other further and general and equitable relief as the nature of the case may require.

WALTER GUION,

Attorney General of Louisiana.

JOHN DYMOND, JR.

ALBERT ESTOPINAL, JR.,

Of Counsel.

STATE OF LOUISIANA, PARISH OF ORLEANS.

Personally came and appeared before me the undersigned authority, William W. Heard, who being duly sworn deposes and says that he is the Governor of the State of Louisiana; that he has read the foregoing bill, and knows the contents thereof, and that the same is true to the best of his knowledge, information and belief.

W. W. HEARD, *Governor.*

Sworn to and subscribed before me this 14th day of October, 1902.

ALVIN EDWARD HEBERT,

Notary Public.

[Seal]

Supreme Court of the United States.

OCTOBER TERM, 1902.

No. 12. Original.

STATE OF LOUISIANA, COMPLAINANT,

versus

STATE OF MISSISSIPPI, DEFENDANT.

BRIEF FOR COMPLAINANT ON DEMURRER.

SYLLABUS.

- 1st. In a boundary suit between States, a State properly makes its appearance in the Supreme Court of the United States through its Governor or Chief Executive. Commonwealth of Kentucky vs. Dennison, Governor, 24 How. 66.
- 2d. The Governor, as the special guardian of the State's interest, is a proper party to initiate necessary litigation. His right to do so is indeed a part of his general powers of supervision over the property and welfare of the State. State vs. Dubuclet, 22 La. An. 602; 25 La. An. 161, and it therefore is not necessary that he should first be authorized by legislative act.
- 3d. The Supreme Court of the United States, exercising original jurisdiction, will take judicial cognizance, with-

out proof or plea, of the laws of a State whether depending upon statute or judicial opinion. *Lamar vs. Micou*, 114 U. S., p. 223, and authorities cited in brief.

- 4th. The Court will, therefore, take judicial notice of Act 65 of the Louisiana Legislature for the year 1884, vesting authority in the Attorney General to initiate litigation necessary to protect the State's interests.
- 5th. In addition to this specific authority, the Attorney General of Louisiana has, by virtue of the jurisprudence of our country, general authority justifying him in joining in the institution of this suit. *Am. and Eng. Ency. of Law*, 2d Edition, Vol. 3, p. 479, *Verbo Attorney General*.
- 6th. This Court will take judicial cognizance of Act 153 of the Louisiana Legislature for the year 1902, and Chapter No. 58 of the laws of Mississippi for the year 1902, which two statutes control the oyster industries of the respective States.
- 7th. This Court will take judicial notice of the laws of the State of Mississippi for the year 1902, page 240, where the Governor of Mississippi stamped with the badge of authority the conclusions or findings of his Advisory Boundary Commission when he submitted its report to his Legislature for action.
- 8th. The submission to the Legislature of the State of Mississippi of the Report of the Advisory Boundary Commission made that report official and binding upon the State of Mississippi to the extent that, as the conclusions there formulated were not repudiated by the Legislature of Mississippi when it could have easily done so, Louisiana was justified in presuming that the action of the Advisory Boundary Commission was the official action of the State of Mississippi.
- 9th. The allegations of the demurrer to the effect that this is not a controversy between two States is negated by the averments of the Bill of complaint; but if there be any doubt in the mind of this Honorable Court as to the suf-

iciency of the allegations of the bill, the case of *Kansas vs. Colorado*, 185 U. S. p. 125, would be sufficient warrant for this Court to refuse to dismiss the bill on demurrer.

The State of Louisiana having, as its Bill of Complaint will show, exhausted all means at its command to amicably and extra-judicially ascertain one of its boundary lines, contiguous to the State of Mississippi, accepted the invitation of that State to have the rights of the respective States, in the pending controversy, settled judicially. Our State had hoped that the conference of the respective advisory boundary commissions, previously appointed by the Governors of the two States, would have resulted in the outlining of a plan of settlement that could have been referred to and approved by the Legislatures of the two States, and subsequently ratified by an act of Congress.

Being informed, however, by the Advisory Commission appointed by the Governor of the State of Mississippi that the contentions as to boundary made by that State were so much at variance with ours that they could not be extra-judicially settled, and this Advisory Commission having suggested that the issues should be submitted to and determined by the Supreme Court of the United States, it comes to us in the nature of a surprise, that we should be called upon, at the threshold of the action, to meet a Demurrer that among other things alleges that there is no boundary dispute between the two States; and that this controversy is not one within the jurisdiction of this Honorable Court.

Making nevertheless a virtue of necessity, we beg to say that the Demurrer as filed, we presume is to be considered by the name given it by the defendant. It really also contains pleas as to the jurisdiction of the Court. Upon a proper proceeding and upon proper plea being filed, it might become necessary, in the event that the Bill of Complaint was not found to be self-sufficient, to take evidence on these pleas. We think,

however, this will not be found to be necessary and we will consider, therefore, the allegations of the Demurrer, as a Demurrer, and as they are severally presented, under their twelve headings, to-wit:

1st. The sufficiency of the Bill of Complaint is first attacked upon the ground that it does not show that the same was filed, or is being prosecuted by the authority of the State of Louisiana, or by the authority of any law whatsoever. The substantive allegation or plea is then made that the Governor and the Attorney General of the State of Louisiana, as a matter of fact, have no authority in law to proceed in this matter of their own motion.

The first paragraph of the Bill of Complaint, it will be seen, is to the effect that the State of Louisiana, one of the United States of America, through William W. Heard, Governor, and upon the information of Walter Guion, Attorney General, brings her Bill of Complaint. This allegation, we respectfully submit, when taken in connection with the jurisprudence of our country, is amply sufficient to sustain the bill on this point. The proper person through whom a State shall make its appearance in any boundary litigation before the Supreme Court of the United States is its Chief Executive. Not only has the appearance been so made in the present bill, but the substantive allegation is also made that the State of Louisiana also appears upon the information of its Attorney General.

Your Honors held, in the case of Commonwealth of Kentucky vs. Dennison, Governor of the State of Ohio, 24 Howard, page 66, as follows:

"The cases referred to leave no question open to controversy as to the jurisdiction of the Court. They show that it *has been the established doctrine* upon this subject ever since the Act of 1789, that in all cases where original jurisdiction is given by the Constitution, this Court has authority to exercise it without any further Act of Congress, to regulate its process or confer jurisdiction; and that this Court may regulate and mould the processes it uses in such manner as in its judgment will best promote the purposes of justice; and that it has also been set-

tled that where the State is a party, plaintiff or defendant, the Governor represents the State, and the suit may be, in form, a suit by him as Governor, in behalf of the State where the State is plaintiff, and he must be summoned or notified as the officer representing the State where the State is defendant." (Our italics).

It would seem to us that the only legitimate reason for denying the authority of the Governor of the State of Louisiana to appear in these proceedings, as representing the State of Louisiana, would be an anxiety on the part of the State of Mississippi to have the State of Louisiana bound by any decision that might eventually be rendered herein. Any other reason for such a demurrer could have for its purpose only the mere matter of delay.

We feel gratified to state that it has been recognized as one of the principles of law that the Governor of a State is the proper party to initiate necessary litigation, and he may do so without legislative authority.

Strange as it may seem, this recognized legal proposition emanates from a decision of the Supreme Court of the State of Louisiana. If the Supreme Court of this State has therefore judicially determined that the Governor of this State is a proper party to initiate litigation, without the necessity of specific legislative authority, then there can be no just cause for anxiety on the part of the State of Mississippi that the State of Louisiana, as a State, would ever endeavor to repudiate this present litigation, or its consequences.

In the American and English Encyclopedia of Law, Second Edition, Volume 14, page 1100, Verbo, Governor, we find the following:

"The Governor, as the special guardian of the State's interest, is a proper party to initiate necessary litigation. His right to do so is indeed a part of his general powers of supervision over the property and welfare of the State." *State vs. Dubuclet*, 22 La. An. 602; 25 La. An. 161.

This authority has likewise been recognized in the suit of *Alexander vs. the State*, 56 Ga. 478.

It would be a peculiar condition of affairs if the Governor of a State, in the event of necessity, were compelled to delay the initiation of necessary litigation until the regular session of the Legislature of the State, or be compelled to put the State to the enormous expense of having a special session of the Legislature called for the purpose of considering a subject which, though very important, might not justify the expense. In support of this proposition, we find that your Honors have likewise held in the case of *Texas vs. White*, 7 Wallace, 700:

"That the Governor of a State may authorize an attorney to institute in the Supreme Court of the United States, suit in the name of the State."

We submit, therefore, that the general proposition can be taken as well settled that it is one of the rights, inherent in the office of the Governor, or of the Chief Executive of a State, and it is one of his duties, to initiate, without the necessity of previous legislative authority, such proceedings on the part of the State as may be necessary to protect that sovereignty in the enjoyment of its rights.

While this single proposition would justify the status of this Bill of Complaint, the State of Louisiana has gone further and has had its Attorney General, by information, join in initiating these proceedings. An examination of the powers and duties connected with the office of Attorney General shows that it is also an inherent right in his office to likewise initiate such proceedings as may be necessary to protect the State in the enjoyment of its rights.

Referring again to the American and English Encyclopedia of Law, Second Edition, Volume 3, page 479, *Verbo*, Attorney General, we find the following:

"The powers and duties connected with the office of Attorney General are so numerous and varied that it has not been the policy of the various Legislatures to attempt the difficult task of enumerating them exhaustively, and they have ordinarily been content, after expressly defining such as are deemed most important, to leave the residue as they exist at common

law, so far as applicable to our jurisprudence and system of government."

In the case of *Hunt vs. Chicago R. R. Co.*, 20 Ill. App. 282, we find:

"In those jurisdictions where the common law has been adopted, wherever applicable, and so far as it has not been changed by statute, a duty required of an Attorney General by the rules of common law is as much a duty required of him by law as though it were imposed by the express mandate of the statute."

Speaking of what the common law duties of an Attorney General are, it was held, in the case of the *People vs. Miner*, 2 Lans. (N. Y.) 397:

"Most, if not all, of the Colonies appointed Attorney Generals, and they were understood to be clothed with nearly all the powers of the Attorney Generals of England, and as these powers have never been defined, we must go back to the common law in order to ascertain them. The Attorney General had the power, and it was his duty:

"1st. To prosecute all actions necessary for the protection and defense of the property and revenues of the Crown."

A grant by statute of certain powers would not operate to deprive the Attorney General of those belonging to the office at common law, unless the statute either expressly or by reasonable intendment forbade the exercise of powers not thus expressly conferred." (*Idem.*)

In the case of the *Attorney General vs. Detroit*, 71 Mich., page 92, we find the following:

"It is the right and duty of an Attorney General to intervene and prevent franchises of a public nature from usurpation and destruction. Thus, the Attorney General can intervene to prevent the destruction of a public market."

Referring again to the American and English Encyclopedia of Law, Second Edition, Volume 3, page 481, *Verbo*, Attorney General, we find the following:

"The Attorney General, as the Chief Law Officer of the State, has the power to institute proceedings in equity in behalf of the people to compel the discontinuance of acts which constitute a public nuisance."

In the brief of counsel for plaintiff, in the case of *Knowlton*,

Attorney General, vs. Williams, 47 L. R. A., p. 314. the authorities or adjudicated cases on the right of an Attorney General to initiate proceedings are further collated in detail.

Thus far, we have considered the right of the Attorney General to bring this suit from the point of view of the general jurisprudence of our country. Considering, however, the legislation of the State of Louisiana, we find that this State has granted specific authority by Act No. 65 of the Acts of the Legislature of the State of Louisiana, approved July 9th, 1884, which provides:

"That the Attorney General be, and he is hereby, authorized and empowered, to institute and prosecute any and all suits he may deem necessary for the protection of the interests and rights of the state," etc.

This being not only a proceeding, but also an original proceeding, before a United States Court, this Court will take notice, without proof, of the laws of the several States of the United States.

Your Honors held, in the case of the Chicago and Alton R. R. Co. vs. Wiggins Ferry Co., 119 U. S., p. 622:

"This Court, and the other Courts of the United States, when exercising their original jurisdiction, take notice, without proof, of the laws of the several States of the United States, etc."

In the case of Lamar vs. Micou, 114 U. S., p. 223, your Honors held: "The law of any State of the Union, whether depending upon statutes or upon judicial opinions, is a matter of which the Courts of the United States are bound to take judicial notice without proof or plea." Owings vs. Hull, 9 Pet. 607; Pennington vs. Gibson, 16 How. 65; Drawbridge Co. vs. Shepherd, 20 How. 227.

In the case of Gormley vs. Bunyan, 138 U. S., p. 635, your Honors held:

"With respect to the refusal of the Court to allow certain other public statutes to be introduced in evidence, it need only be said that the Courts of the United States take judicial notice of all the public statutes of the several States."

Your Honors will, therefore, take judicial notice of the existence of Act No. 65 of the Legislature of the State of Louisiana for the year 1884, authorizing the Attorney General of Louisiana to institute this suit. You will also take judicial cognizance of the opinions of the Supreme Court of this State in this connection, and likewise you will take notice of the other statutes of Louisiana and Mississippi referred to in the Bill of Complaint. There is a long line of authorities in support of this proposition, among which may be mentioned:

Fourth National Bank vs. Francklyn, 120 U. S., p. 747; Huntington vs. Attrill, 146 U. S. 678; Lloyd vs. Matthews, 155 U. S., p. 227; Mills vs. Green, 159 U. S., p. 657; Eastern Building & Loan Association vs. Ebaugh, 185 U. S., p. 114.

The following authorities are also in point, to-wit:

Knower vs. Haines, 31 Fed. 514; Newberry vs. Robinson, 36 Fed. 843; Borland vs. Haven, 37 Fed. 406; State vs. Coosaw Min. Co., 45 Fed. 808; Western, etc. R. Co. vs. Roberson, 61 Fed. 594; Davenport vs. Moore, 74 Fed. 946; Davidow vs. Pennsylvania R. Co., 85 Fed. 944; Andruss vs. People's Building Association, 94 Fed. 580.

The bill filed by the State of Louisiana is, therefore, sustained both by the jurisprudence of our country and by the statute law of the State of Louisiana, and to this extent must be maintained.

2d. The complaint is next made that the bill does not show on its face a question of boundary between the States and within the cognizance and jurisdiction of the Supreme Court of the United States, under the provisions of Section 2 of Article 3 of the Constitution of the United States of America. As to the weakness of this contention, we beg to refer you to the contents of the bill, and more particularly to paragraphs 16, 17 and 21.

3rd. The third objection is somewhat similar to the second. As to it, we would say that the main question at issue, as is shown by the face of the bill, is the interpretation or construction of Acts of Congress fixing the boundaries of two adjacent

States. It was in the interpretation of these Acts of Congress that the two States could not extra-judicially agree by reason of diverging views. As appears from the bill, it is alleged that the State of Louisiana was granted by the Congress of the United States all islands within three leagues of its coast, and the State of Mississippi was subsequently granted all islands within six leagues of its coast, and further that there are islands which are not only within three leagues of the Louisiana coast, but which are also within six leagues of the Mississippi coast, and further that there are lands which Louisiana claims are part of its mainland, but which are claimed by Mississippi to be islands, and that these lands are not only within three leagues of, but form part of the Louisiana mainland, and are also within six leagues of the Mississippi coast line, so that depending upon the interpretation of the Acts of Congress creating the States of Louisiana and Mississippi, it is possible for said lines to conflict both upon land and water, but a further allegation of the bill is that there is an interpretation of the Acts of Congress which does away with this conflict, and that this is the interpretation which the State of Louisiana seeks at the hands of your Honors to have declared to be the proper meaning and true interpretation of said Acts, and the determination of this issue is certainly a subject within the jurisdiction of the Court.

4th. It is here charged that the bill shows that the State of Louisiana has not attempted to mark or define by buoys or otherwise her boundary line in the waters to the south of the State of Mississippi and to the southeast of the State of Louisiana. What the consequences of this are is not stated. We assert that it was not necessary, prior to instituting this suit, for Louisiana to buoy her boundary line, nor was it necessary for her to so allege in the bill. But let us see what in fact the bill does allege. It shows (paragraph 15) that the boundary line, the deep water channel, was and is buoyed by the United States Government. It further shows that the boundary line as claimed by Louisiana was set forth definitely and shown to

the State of Mississippi (paragraph 20, Exhibit E) by the map presented to it; and in the several maps made part of the bill (Diagrams Nos. 1, 2, 3 and 5), the line claimed is clearly set forth.

It is further alleged by complainant (paragraph 29) that all competent authority, including the United States Government, and more particularly the United States Land Office, had reorganized this line which is set forth on the maps in the bill and had transferred to Louisiana, United States lands in accordance therewith.

This is all that could be required, and this phase of the Demurrer is without merit.

5th. As to this paragraph of the Demurrer, we beg to submit that the Bill of Complaint does not allege that the commissions appointed by the Governors of the two States were clothed with the legal authority to finally fix the boundary between the two States. It simply sets forth, in this respect, a history of the facts as they occurred, and it is for the Court to draw its deductions therefrom. These commissions were appointed for the purpose of examining the question in an advisory manner, and to report the results of their investigations to the Governor appointing them. A favorable, unanimous report of the joint commissions would have paved the way to mutual legislative action by the two States, which, when approved by an Act of the Congress of the United States, would have been binding on both of them. It was only by an elaborate proceeding of this kind that the matter could have been extra-judicially settled. This is recognized by the fourth section of the Constitution of the State of Mississippi, where reference is made to the fact that the Legislature of that State might settle boundary disputes between it and its coterminous States when such disputes should arise.

It is an incident of executive power, however, when information is wanted to appoint persons and commissions to examine and report. What the Bill of Complaint does charge is that the report of the Mississippi Advisory Boundary Commis-

sion was a sufficient intimation of the official attitude of that State as to justify Louisiana in presuming that an extra-judicial settlement of the boundary dispute was impossible.

As has been heretofore stated, this Court will take judicial cognizance of the public acts of the various States of the Union, and authorities in support of this are herewith submitted. An examination of the official edition of the laws of Mississippi for the year 1902, page 240, will show that the Governor of the State of Mississippi submitted to the Legislature of the State of Mississippi the report of the Advisory Boundary Commission, appointed by him, which report is referred to in the Bill of Complaint (paragraph 21). That the Legislature of the State of Mississippi took no action on the subject is no fault of the State of Louisiana, but a ready explanation of its failure to take action is found in the suggestion that the said Governor there made to his Legislature that a friendly suit in the Supreme Court of the United States was contemplated. There was no need, then, for further action, and none was taken, for this suit was naturally expected and naturally followed. This, however, can only be taken as an official ratification by the State of Mississippi of the action of its Advisory Boundary Commission, and as warranting the State of Louisiana in presuming that the State of Mississippi as a State disputed officially the contention of the State of Louisiana as to boundary, and would be pleased to have the dispute settled by the Supreme Court of the United States.

This element of the Demurrer is, therefore, likewise without merit.

6th, 7th, and 8th. We may consider under one heading these three paragraphs of defendant's Demurrer, because they all in different form assert the same proposition, viz: That the Bill of Complaint discloses that it is private interests of individuals, and not the State's public interest, for which protection is sought by the State at the hands of the Court. Even a cursory perusal of the Bill of Complaint will show that it is asserted that there is a serious difference of opinion between the

official representatives of the two States as to the interpretation of the Acts of Congress establishing their respective boundaries (paragraphs 18 to 21, inclusive); that islands and land as well as water area are in dispute (paragraphs 24 to 37, inclusive); that Louisiana is interested in maintaining her sovereignty over the land and water within her boundaries (paragraphs 11, 12, 16 and 17), and collecting her taxes therefrom (paragraphs 11 and 29); and that her State laws should be effectively enforced within her territorial limits (paragraphs 11, 12, 16 and 17).

While it may be true that there might be some slight advantage to those citizens of Louisiana engaged in the oyster business, to exclude the citizens of Mississippi from the Louisiana Natural Oyster Reefs, this is but an incident, and cannot be considered the ground of complaint of the bill; for the State of Louisiana has a much greater public interest. First of all, it is her duty, and she must maintain order and observance of her laws. Then the natural oyster reefs are the property of the State in her sovereign capacity, as are also the lands under the navigable waters of the State. The Bill of Complaint charges that the State of Louisiana regulates her oyster industry by legislation and specifically refers thereto (paragraphs 11, 12 and 13).

A reference to this Act, No. 153 of the Legislature of the State of Louisiana of the year 1902, shows that the State is entitled to specific license fees from the oyster vessels, tongmen, dealers and canners operating in her waters, and on her oyster beds; that she is entitled to 2 cents per barrel privilege license on each barrel of oysters fished from her waters, and a rental of one dollar (\$1.00) per acre of water bottom leased from the State, all of which revenues go into her State Treasury, so that she has a manifold public and direct pecuniary interest in ascertaining whether this disputed area is hers or her neighbor's.

The Court will take judicial cognizance of the existence of Act 153 of the Legislature of the State of Louisiana for the year 1902, which is the Act referred to in the Bill of Complaint

(paragraph No. 11) as regulating the oyster industry of the State of Louisiana, and it will also notice Chapter No. 58 of the laws of the State of Mississippi for the year 1902, p. 54, which is the statute referred to in the Bill of Complaint (paragraph No. 10) as being the one by which the State of Mississippi regulates its oyster industry.

In the case of *Kansas vs. Colorado*, 185 U. S., p. 142, your Honors referred to the case of *Missouri vs. Illinois*, 180 U. S., p. 208, and mentioned approvingly the remarks of Mr. Justice Shiras, to the effect that it was not essentially necessary for a State in her Bill of Complaint to allege a pecuniary interest.

By reference to the statutes of the two States of Louisiana and Mississippi, heretofore referred to, it will, however, appear that both States have in fact in this case a pecuniary interest in the matter in controversy, as both States, by their statutes, propose to derive revenue from their respective oyster industries. An oyster industry is situated in the territory in dispute, as charged by the Bill of Complaint (paragraph No. 9), and it is for this Court to determine to which State said territory belongs, so that the fortunate State may reap the profits arising from the oyster industry there existing, and it is therefore readily apparent that this contention of the defendant is without merit.

9th and 10th. These two allegations of defendant's Demurrer are also so closely related as to be better considered together. In answer thereto, it will appear from the bill that the Advisory Boundary Commission appointed by the Governor of Mississippi (paragraph 21) claims an adverse title to these certain lands and water area, and would not concede to Louisiana the area delineated on the map made part of the bill, as exhibit "E" (paragraph 20). This commission represented the Governor, and the Governor represented the State of Mississippi, and the State of Louisiana was justified in presuming that no extra-judicial agreement could be made. If this were not so, and if Louisiana's right of action were dependent on the action of the Mississippi Legislature, and the Mississippi

Legislature should omit or fail to take action thereon when the matter was laid before it, as is the case at bar, Louisiana could never assert her title in the Courts, and there would ensue an oyster war such as has occurred in some of the Atlantic States because of the value the locality has for the development of the oyster industry.

This is just what is charged in the bill, for it says (paragraph 17) that there was about to be an armed conflict between the Sheriff and the officers of the Parish of St. Bernard, of Louisiana, and the Sheriff and officers of the County of Harrison, of the State of Mississippi. These are the counties that most nearly touch each other in the disputed area, as is shown by the maps attached to the Bill of Complaint.

The Sheriff of Harrison County, Mississippi, is an officer of the State of Mississippi, required, as a representative of the State of Mississippi, to preserve peace and order in the County of Harrison, and when he and his officers were claiming Louisiana territory as Mississippi territory, and were about to back up their claim by force of arms, it was high time for Louisiana to seek some tribunal to arbitrate and settle her claims.

If we again refer to the Legislative Acts of the two States, Act 153 of 1902 of Louisiana and Chapter 38 of the laws of 1902 of Mississippi, it will appear that both States have created State Commissions to regulate and control the oyster industry of the respective States. It is, therefore, highly important that these commissions should have their territorial limits defined, so that they would not each be insisting, as the official representatives of their respective States, that the disputed area was under their individual control.

11th. Our answer to this is fully set forth in our reply to the third paragraph of defendant's Demurrer to the effect that our bill is to fix boundaries and have conflicting Acts of Congress properly construed and interpreted and its purpose is not to change any boundary, because we charge that Mississippi never had any legal claim to Louisiana territory (para-

graphs 2 to 8, inclusive), and that there is no boundary to change, but one to determine and fix.

12th. This is a suit for boundary, and not one to determine the number of the armed force that was resisting Louisiana's claim, nor its personnel. Nor is it a suit or proceeding to punish the offenders personally for violating any law or disturbing the peace. We made the substantive allegation and charge (paragraph 17) that something had to be done to avoid an armed conflict which was threatening between the States' officers in those portions of the two States where they most nearly approached each other, in the disputed area, and that the alternative was to appeal to the Governor of Mississippi, which was done. That this did not produce satisfactory results, is no fault of ours, as Louisiana did all it could to settle the matter amicably and extra-judicially, only to be invited to come here. Here we are, and here with the permission of your Honors, we now propose to stay until this matter is finally settled.

For the foregoing reasons, therefore, complainant respectfully represents that the Demurrer of defendant is not well founded in law, in any particular; that it should be overruled and set aside, and defendant required to answer complainant's bill as filed and of record herein, but should your Honors conclude that our Bill of Complaint is not in any respect self-sufficient, then your orators respectfully pray for leave to amend as justice and equity may require.

Respectfully submitted,

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Of Counsel.

